

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONTIE S. MITCHELL,
Plaintiff,

-against-

JPAY, LLC; B. MCCLOSKEY, FOOD
SERVICE ADMINISTRATOR AT
FISHKILL CORRECTIONAL FACILITY;
SGT. D. PAUSELIUS, SERGEANT AT
FISHKILL, C.F.,

Defendants.

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DATE FILED: 05/15/2024

21-CV-9070 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge:

Plaintiff, proceeding *pro se*, commenced this action in the Northern District of New York (“NDNY”) on or about November 16, 2020. (ECF No. 1.) On May 20, 2021, Plaintiff’s initial complaint was dismissed without prejudice for failure to state a claim. (ECF No. 15.) Plaintiff was granted leave to amend. (*Id.*) On September 13, 2021, Plaintiff filed his Amended Complaint (“AC”). (ECF No. 21.) On November 3, 2021, the NDNY Court issued an order deeming the AC the operative pleading and transferred all claims against Defendants Sergeant Daniel Pauselius, Food Service Administrator Robert McCloskey, and JPay, LLC¹, which arise from Plaintiff’s time at Fishkill Correctional Facility, to this district. (ECF No. 23.) The NDNY Court made no ruling as to the sufficiency of the AC with respect to the transferred claims. (*Id.*)

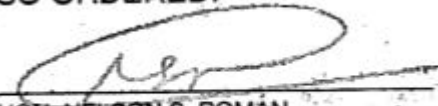
On June 30, 2022, Defendants Pauselius and McCloskey filed a motion to dismiss Plaintiff’s AC. (ECF No. 34.) On January 27, 2023, the Court granted the motion to dismiss and granted Plaintiff leave to file a Second Amended Complaint. (ECF No. 40.) The Court held that if Plaintiff failed to file a Second Amended Complaint by February 27, 2023, Plaintiff’s claims

¹ Defendant JPay has not appeared in this action as of the date of this Order.

would be deemed dismissed with prejudice. (*Id.* at 8.) As of the date of this Order, Plaintiff has not filed a Second Amended Complaint.

Accordingly, the Court DISMISSES with prejudice the above-captioned action for want of prosecution. The Clerk of the Court is directed to terminate this action, to mail a copy of this order to *pro se* Plaintiff at the address on ECF, and to show service on the docket.

Dated: May 15, 2024
White Plains, NY

SO ORDERED:

HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE